IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE FOURTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION No.19974 of 1998

Between:

Man Mohan Prasad Puri, S/o.late Narayandas Puri,
R/o. Hyderabad.

..... PETITIONER

AND

1 The Government of India, rep. by Principal Secretary
Ministry of Defence, Secretariat, New Delhi-110 011.
2 Government of India, rep. by Addl.D.T.E.
General Personnel Service, Adjacent to General Branch Army

Head Quarters, D.H.Q, P.O. New Delhi.
3 Government of Andhra Pradesh, rep. by Zilla Sainik Welfare

Officer, R.R.District, Padmarao Nagar, Secunderabad-500 025.

.....RESPONDENTS.

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a Writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the respondents in not granting the reservists service pension to the petitioner as illegal, arbitrary and against the principles of natural justice and consequently direct the respondents to grant him the reservists service pension.

Counsel for the Petitioner: Mr.CH.RAVINDRANATH

Counsel for Respondent Nos.1 & 2: Mr.A.RAJASEKHAR REDDY,

SC FOR CG.

Counsel for Respondent No.3 : G.P. FOR HOME.

The Court made the following :

ORAL ORDER:

This writ petition is filed seeking a mandamus declaring the action of the respondents in not granting reservist pension to the petitioner as arbitrary and illegal, and to consequently direct the respondents to grant the reservist pension to the petitioner.

The petitioner enrolled in Indian Army with effect from 16-5-1960 and worked up to 21-4-1968, on which date he was transferred to reservist establishment as per the discharge certificate received from MEG Group vide their letter dated 13-8-1996 saying that the petitioner was dismissed from service on 10-4-1984, having been illegally absent when he was called up for training and, therefore, he was declared as deserter. Thereafter, the petitioner filed the present writ petition seeking reservist pension.

A detailed counter affidavit has been filed by Col.S.Radhakrishnan, Commanding Officer, 2 Engineer Regiment, wherein *inter alia* it is stated that the petitioner was called up for reservist biennial training from 20-4-1970. Although four letters were issued to him, the petitioner did not report for training. On verification through DSS & A Board, it was found that the petitioner was not available at the given address. The petitioner left the place deliberately avoiding call-up notice and also remained absent during national emergency in 1971. The petitioner did not serve the nation in the hour of need which is termed as unbecoming conduct of a soldier. It is stated that the address given by the petitioner is recorded in the service documents of the soldier. Thereafter, if there is any change in the old address, it is the responsibility of the incumbent to inform the Record Office for updating the address. The petitioner never intimated any change of address. Correspondence was made with the petitioner by the record office on the address recorded in the documents. If it is the plea of the petitioner that he did not receive any communication, it is totally false,

because the DSS & A Board has made efforts to trace out his whereabouts and failed, and, therefore, the petitioner was declared as deserter being illegally absent, with effect from 20-11-1970. Even though apprehension roll was issued, he could not be arrested by the police. On completion of three years as a deserter, he was dismissed from service and also removed from the reservist roll as per the rules. Such Army deserters like the petitioner is not eligible for any pension as per Regulation 113 (a) of Pension Regulations Part I.

It may be noticed that this writ petition has been filed in 1998 whereas the services of the petitioner were dispensed with in the year 1984 making several allegations including non-service of notice of reservist training though address was the same as was furnished in the documents. Further, it is for the respondents to prove before this Court by placing material that such notice was received by the petitioner. In the absence of such material, the respondents cannot take up on themselves and say that the petitioner avoided to receive the notice and, therefore, he is not entitled for pension. This stand of the petitioner is not tenable at this length of time.

In view of the averments made in the counter affidavit filed by the respondents apart from the writ petition being belated, the writ petition is devoid of merits and is liable to be dismissed.

The writ petition is accordingly dismissed. No costs.

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(C.V.RAMULU, J.)

4th November 2004.

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To

1.The Principal Secretary, Ministry of Defence, Government of India, Secretariat, New Delhi-110 011.
2. The Addl.D.T.E, General Personnel Service, Government of India, Adjacent to General Branch Army Head Quarters, D.H.Q, P.O. New Delhi.
3. The Zilla Sainik Welfare Officer, R.R.District, Government of Andhra Pradesh, Padmarao Nagar, Secunderabad-500 025.

4. Two CCs to Govt. Pleader for Home, High Court Bldgs., Hyderabad (OUT).

5. Two CD copies.